



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 14, 1992

Ms. Mindy Ward  
City Attorney  
City of San Angelo  
P. O. Box 1751  
San Angelo, Texas 76902

OR92-579

Dear Ms. Ward:

The San Angelo Police Department received a written request for certain information relating to two promotional examinations recently administered by the department. You ask whether this information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15476.

The requestor asks for copies of the promotional examinations, the answer keys for each, and an answer sheet completed by the requestor for one of the examinations. You contend that all of the requested information is excepted from public disclosure by section 3(a)(1) of the Open Records Act.

Section 3(a)(1) excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You cite no statutory provision that expressly makes the requested information confidential, but you cite several opinions and decisions of this office which conclude that competitive examinations, including employment examinations, are confidential by law under section 3(a)(1). See Open Records Decision No. 118 (1976); Attorney General Opinion Nos. H-483, H-242 (1974). You also direct us to parts of the Fire Fighters' and Police Officers' Civil Service Act, codified as chapter 143 of the Local Government Code, that prescribe promotional examination procedures.<sup>1</sup>

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<sup>1</sup>You have not claimed section 3(a)(22) of the Open Records Act as an exception to disclosure on this occasion. This provision protects, among other things, "test items developed by licensing agencies or governmental bodies." The exception appears to codify in part the conclusions of the opinions cited in your letter.

We agree that the requested information is excepted by section 3(a)(1) of the Open Records Act. Our decision is based on provisions of the Fire Fighters and Police Officers Civil Service Act, codified as chapter 143 of the Local Government Code. The act supplies exclusive procedures for the review of civil service examinations and examination answers which indicate that the legislature intends such information to be confidential for purposes of the Open Records Act.

With the exception of certain supervisory or managerial positions, the civil service act requires each vacancy in a police or fire department's position classification schedule to be filled from an eligibility list compiled from the results of examinations administered in accordance with the act. Local Gov't Code § 143.021(c). The act provides for the administering of entrance examinations and promotional examinations. *Id.* §§ 143.024, 143.025, 143.030 - 143.034. The examinations are prepared by the director of the fire fighters' and police officers' civil service department and must be based on "(1) the duties of the position for which the examination is held; (2) material that is of reasonably current publication and that has been made reasonably available to each member of the [department conducting] the examination; and (3) any study course given by the [department.]" *Id.* § 143.032(d). It must also be taken from sources which employees are notified of 90 days in advance of the examination. *Id.* § 143.029(a). Subsequent notices may also indicate the number of questions taken from each source used for the examination, and the chapter used in each source. *Id.* § 143.029(c).

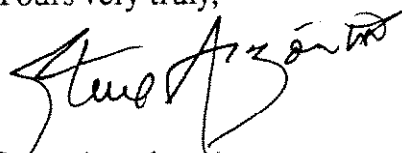
Several sections of the civil service act address the security of the examination. The director of the civil service department is "responsible for the preparation *and security* of each promotional examination." *Id.* § 143.032(g) (emphasis added). A person who knowingly or intentionally reveals part of a promotional examination to an unauthorized person or who receives a part of an examination for unfair personal gain or advantage commits an offense punishable by a fine of not less than \$1000, confinement in the county jail for a period of up to one year, or both. *Id.* § 143.032(h), (i). An eligible candidate for promotion may, following the examination, review his own examination and answers, the examination grading, and the source material used to prepare the examination. *Id.* § 143.034(a). If dissatisfied, the candidate may appeal for review of the examination to the civil service commission. *Id.* A decision of the civil service commission may subsequently be appealed to the district court. *Id.* § 143.015. However, the act

explicitly states that a candidate "may not remove the examination or copy a question used in the examination." *Id.* § 143.034(b).

These latter provisions sufficiently demonstrate that the security of the examination and the integrity of the examination process are of utmost importance. They delegate the duty of safeguarding the promotional examination to the director of the civil service department and install procedures designed to prohibit the dissemination of examination questions and answers. With these procedures, we believe the legislature has clearly expressed its intent that, short of an appeal to the civil service commission or district court, section 143.034 supplies the exclusive procedure for reviewing examination questions and answers.

When a statute supplies exclusive procedures for reviewing particular information in the custody of a governmental body, procedures which do not allow access to the public generally, the statute will be regarded as "deeming" such information confidential under section 3(a)(1). *See, e.g.,* Open Records Decision No. 495 (1988) (statutory provisions limiting access to certified agendas "only upon" court order make such agendas confidential for section 3(a)(1) purposes). Because section 143.034 provides exclusive procedures for the review of civil service examination questions and answers, we conclude that such information is confidential for purposes of section 3(a)(1) of the Open Records Act. Accordingly, we conclude that the department may not honor the request for copies of these items in this instance. If you have questions about this ruling, please refer to OR92-579.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragón", with a stylized flourish at the end.

Steve Aragón  
Assistant Attorney General  
Opinion Committee

SA/lmm

Ref.: ID# 15476  
ID# 15650

cc: Lt. John C. Sparks  
San Angelo Police Department  
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